

**ZONING BOARD OF ADJUSTMENT  
MARCH 2, 2016 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, Rob Harrison and James Monahan. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**01-16 Daniel Whyte:** (Request for Rehearing by abutter Thomas Weston, Jr.) Applicant wishes to convert an existing 3 unit residential building to a 4 unit residential building and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, and applicable supplemental standards under Article 28-5-3, to permit the conversion of an existing residential building to accommodate 4 units (use A-9) where such conversions are not permitted,
  - 2) Variance to Article 28-5-3(b)(1), Minimum Lot Size, to apply the minimum lot size for conversion applicable to a CU Commercial Urban District to the RS Residential Single-Family District since both have a base lot size of 12,500 square feet,
  - 3) Variance to Articles 28-4-1(e), Maximum Lot Coverage & 28-4-1(h), Table of Dimensional Regulations, to permit a total lot coverage of 55% where a maximum lot coverage of 40% is allowed,
  - 4) Variance to Article 28-7-7(e), Minimum Driveway Widths to permit;
    - a) the driveway on the west side to remain at 17 feet where 24 feet is required,
    - b) (Withdrawn by applicant) the driveway on the east side to be 22 feet wide where 24 feet is required,
  - 5) (Withdrawn by applicant) Variance to Article 28-7-7(g)(1), Parking Restrictions in the Required Front Yard, to permit one parking space within the required front yard on the west side of the building,
  - 6) (Withdrawn by applicant) Variance to Article 28-7-8(a), Restriction on backing into street, to allow existing parking configuration on the west side of the building that may require vehicles exiting the driveway to back out into the street,
- All for property located at 35 – 37 Clinton Street in a RS Residential Single-Family District.

Thomas Weston Jr. requested a rehearing. Daniel Whyte's attorney, Mark Puffer submitted an Objection to Motion for Rehearing for the Board to review also.

Chairman Carley asked the Board members if they found any new evidence or if they felt that they had made an error in law. Harrison didn't notice any new evidence. Wallner, Monahan and Winters also did not notice any new evidence. Winters did not feel there were any compelling new facts raised in the request for rehearing.

A motion to deny the rehearing request was made by Monahan, seconded by Harrison and passed by a unanimous vote.

**49-15 Frank Lemay for 95 Manchester Street, LLC,:** Applicant requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to construct a 10 foot by 24 foot entry atrium with a front setback of 42.80 feet where a 50 foot setback is required for property at 95 Manchester Street in a CH Highway Commercial District.

Jonathan Halle, Warren Street Architects testified as well as Jeff Lewis of North Point Engineering.

Mr. Halle noted that this is the Lovering Volvo property. The building is 42.8 feet off the front property line. They would like to remodel the show room in the front. They want to retrofit the existing footprint. The franchise agreement requires the auto dealer to have their marquis. A proposed front entry atrium is also required and in the setback. They want to add a 10' x 24' covered entryway to the front of the building but it would sit outside the existing footprint.

Carley asked if this were a (building) code issue. Mr. Halle stated that the Energy Code requires a front entry coming and going; an Arctic Entry. The Volvo franchise documents require an aesthetic entry way – a U shape canopy entry on the outside of the building. This is what they are proposing. The entry is 10 feet. The code requires 7 feet.

Harrison asked if the City was planning on widening Manchester Street. Walker stated that he is not sure if they have obtained the right of way on this section of Manchester Street or not. There will be a widening but not sure if it's in this area. Monahan asked about what portion of the building is 'front'. Mr. Halle stated that the entry will change from the parking lot to the roadside so that would be the 'front'. Monahan asked if they will be parking cars out front. Mr. Halle said that the parking will remain the same. Jeff Lewis noted that it would be a display area, not customer parking.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to grant the request was made by Harrison, seconded by Wallner and passed by a unanimous vote.

Harrison heard testimony that it was a code requirement which means they would need a variance. Monahan asked Walker if they would be coming back before the Board for signage Walker deferred to the applicants, they did not know.

**05-16 Ms. Cathy Champagne for 45 Constitution, LLC:** Applicant request a Variance to Article 28-6-7, Signs Prohibited Under this Ordinance, Section (i), to permit a sign to be placed above the sills of the first level of windows above the first floor and with the highest point 27 feet above grade where the maximum height allowed is 25 feet and when no sign shall be placed above the sills of the windows above the first floor for property located at 45 Constitution Avenue in a OCP Opportunity Corridor Performance District.

Prior to hearing this appeal, the Board must determine whether the request differs materially in nature or degree, or whether the circumstances affecting the property have changed significantly when compared with the circumstances existing under the request in case #43-15, Jutrus Signs for the Rowley Agency, Inc., December 2, 2015.

Ms. Champagne Champagne testified. This is significantly different because the size of the sign is different. The application tonight has smaller letters, no logo, and the "Inc." has been removed. The letters are also white not green. The message has changed.

Wallner stated that the last request was for 300 s.f. where 150 SF was the max allowed and this is not an issue here and there was additional signage. Ms. Champagne said that it's purely a height issue now.

A motion that this request differs materially in nature or degree was made by Wallner, seconded by Harrison and passed by a unanimous vote.

Ms. Champagne said that the large drawings that the Board has shows the 25 foot height limitation and the building. The letters are being placed in one of the only spots that make sense on the building. Under the letters there is a row of gray split blocks and they are doing their best to keep letters off the building detail, which is that line. They want the sign to look professional. The letters will be white. It is less harsh than the green they requested before.

Monahan asked how many square feet the sign would be. Ms. Champagne stated that the sign would be 122 s.f. where 150 s.f. is allowed. Winters asked what the special conditions of this property vs. the neighboring properties are that would make it impractical to have it under the height requirements. Harrison stated it would be the windows. Ms. Champagne answered the 25' height cannot address every property's needs and this won't alter the character of the area where this property is located. Monahan asked where the previous company had their signage on the building. Ms. Champagne stated that there was a very small one on the building. She saw no indication that there was any other one there. Winters asked if the Rowley agency owned the building. Ms. Champagne said that they did and had for about 6 months to a year. Monahan stated that signage was for the public to find the building from Constitution Ave., not I-393. Ms. Champagne stated that the ground sign from roadway helps. There is quite a setback for the building so they changed the color of the signage to white so that it is more visible; even from I-393. Harrison asked if it meets the square footage allowance. Ms. Champagne said that it does. Monahan asked if the sign were illuminated. Ms. Champagne said that each letter will be internally lit.

In favor: none.

In opposition: none.

Code: NONE.

DECISION: A motion to grant the request was made by Wallner, seconded by Harrison and passed by a 3-2 vote with Monahan and Carley in the minority.

Wallner felt it was substantially less in size than allowed. Hardship is persuasive with window height taken into account.

**06-16 Raymond and Linda Lassonde :** Applicant wishes to legitimize a front setback encroachment for an addition constructed without permits and setback relief for a future construction of a detached garage and request the following:

- 1) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to legitimize an existing addition with a front setback of 38 feet +/- where a 50 foot setback is required and an attached 5 foot by 16 foot deck with a 37 foot side setback where a 40 foot setback is required and,
- 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the construction of a 24 foot wide by 26 foot deep detached garage with a 13 foot side setback where a 40 foot side setback is required,

For property at 494 Clinton Street in an RO Residential Open-space District.

Raymond and Linda Lassonde testified. Ms. Lassonde submitted additional information to the Board.

Carley suggested that since the two requests were materially different that they should hear then one at a time.

Ms. Lassonde stated that the existing structure was built in 1942 and they purchased property in August of 1997. They were first time home buyers. They hired a local contractor to build a 2 story addition and he started the addition in 2001 and estimated it to be a 4 month project. It was finished in 4 years. The contract was to include any and all permits. This past fall they wanted to do a VA refinance loan. The VA appraiser came out to do appraisal and found there were no permits for the addition. So 15 years later they are retroactively applying for the permits. The contractor is now deceased so they can't go back to him. Tedd Evans the City of Concord's Chief Building Inspector came out to the house to inspect. They hired R&T to come out and inspect and permit the electrical work. They hired a plumber to correct a deficiency noted. There have been some code changes so some things are being changed to bring it up to today's codes. They are trying to legitimize the addition. Ms. Lassonde stated that there was no other reasonable location to build the addition since the existing structure was mostly within the front setback.

Carley asked if it should have been an equitable waiver request. Craig Walker said it could be. But there was no permit on this. He's been looking into it a little more. An Equitable waiver granted under this section shall not be construed as a nonconforming use, etc. (See Planning & Land Use book RSA 674:33-a.) The Equitable Waiver would not provide protection if the addition were destroyed for any reason. If a variance were granted the structure could be rebuilt. If a variance were denied they could come back and request an Equitable Waiver. Winters asked if one of the standards for an Equitable Waiver was that it was a pure error not as in here, where the contractor didn't get a permit. Walker stated that there were two parts, it would have to be an honest mistake or an honest error in measurement or in lieu of demonstrating that show that it has existed for more than 10 years, along with the no threat to health, safety and general welfare, etc.

The applicant continued on to testify to request #2 for the garage. Ms. Lassonde said they were applying for this right now because economically they were already paying for the variance request for the existing structure and someday, hopefully within the next two years, they would like to build a garage so it made sense to pay one fee and do it all now rather than come back next year and pay another fee. Carley asked why the garage was appropriate. Ms. Lassonde said that the purpose for the RO zone is so that they won't encroach on their neighbor's property or be out of character with the neighborhood. Most neighbors around them have garages. They have a narrow long piece of property. The two properties next to them are the same. To the west side there is a tree line between them and the neighbors. Those neighbors will not have a view of the garage. At 488 Clinton Street there is a tree line there and one also between two properties so they can't see it either. At 484 Clinton it would be on the opposite side of the house so they won't see it either. Neighbors at 483 Clinton Street are the only ones that can see it. Carley asked if a corner of their property is in Bow. Ms. Lassonde said that they abut Bow. A variance is necessary as the house is grandfathered at 29 feet to the road. To add on the right side is 25' from the property line. Front 50 foot setback won't be met as it wouldn't be attached to the house if it were setback. The septic system and leach field is in the back so they can't go that way. Monahan asked if there were another structure. Ms. Lassonde said that there is a shed back there and a rock wall. If it were behind the house it is all woods back there. Carley asked if they had two curb cuts or just one. Ms. Lassonde said two.

Winters why can't you put the garage on the right of the property? Ms. Lassonde stated that there was a leach field there and it is only 25 between the house and the property line and it would be a greater encroachment in the 40 foot setback.

In favor: none.

In opposition: none.

Code: none.

DECISION: The Board took the following action:

Request #1: Setback for existing addition which was built 15 years ago with no permit pulled. The owners thought it had been pulled. It was not discovered until they refinanced. Winters felt it was unique circumstances with the design of the lot. Where ever they would have built onto the house they would need a variance. Harrison didn't feel the addition was not an extraordinarily huge addition, had they come in prior to building the addition he feels he would have found it a reasonable request. A motion to approve this request was made by Winters, seconded by Harrison and passed by a unanimous vote. Carley felt there was no purpose being served in denying it.

Request #2: Garage: 2 car 24x26 – there is no other reasonable place on the lot that it could go. No particular impact on the neighbors. The septic is in the way. Wallner stated that there was no reasonable place to put it. The owner could be deprived of reasonable use if denied since most of the houses in the neighborhood have garages. A motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote. Winters said that it is a pretty extreme encroachment. Is it reasonable for a 2 car vs. 1 car garage? In this neighborhood people have 2 car garages so it is reasonable in his opinion. Carley stated that a 2 car garage is a reasonable use for a home in NH.

**07-16 Ms. Moira Brouillard:** Applicant wishes to establish a hair salon and requests a variance to Article 28-2-4(j), Table of Principal Uses, to permit a hair salon (personal service use D-1) where such use is not permitted at 294 N. State Street in an IN Industrial District.

Ms. Brouillard testified. She owns a small hair studio and would like to relocate. Troy Brouillard was also available to testify. Carley asked if it is located across the street from the State Prison. Ms. Brouillard stated there are 2 lots; one has a 400 s.f. building. Ms. Brouillard stated that everyone in that area has had to apply for a variance, or so it seems. Carley asked if this was for a hair salon. Ms. Brouillard said it was. She is a sole proprietor. No employees or staff. Carley asked if there was parking next to the building? Ms. Brouillard said yes. Winters asked what "ecofriendly" meant for her business. Ms. Brouillard said that her products were fragrance free; chemical friendly. There is no ammonia or formaldehyde. Wallner asked how many chairs she could place there. Ms. Brouillard said that she won't expand. She prefers to work alone. She has a Purchase & Sales Agreement which is contingent on this being approved. Winters asked if she was the only one there so maybe she would only have 1 or 2 cars there at a time. Ms. Brouillard said yes. She will be parking behind the building. Monahan asked if there is no business there now. Ms. Brouillard said that was correct. It has been unoccupied at least 6 months.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Harrison, seconded by Monahan and passed by a unanimous vote.

Carley: building is unusual as it is small. Harrison said that this would be a great use of that building with a sole proprietor and it will fit her needs.

MINUTES

A motion to approve the February 2016 Minutes was made by Wallner, seconded by Harrison and passed by a unanimous vote.

A TRUE RECORD ATTEST,

*Rose M. Fife*, CLERK  
ZONING BOARD OF ADJUSTMENT